CF0000062736

"allotted by the High Court Legal Servi... ommittee"

Allated by the High Court legal Service Committee. (2)

Division Bench (Chhi...

IN THE HIGH COURT OF JUDICATURE MP AT JABALPUR

CRI.APPEAL No. 1147 /99

Appellant :- Asooram son of Bhoudari
aged about 40 years, R/o village Kunmera, Ghotiapara; P.S. Sitapur Distt Sarguja M.P.

- versus -

Respondent :- State of Madhya Pradesh through Station House Officer, Police Station Sitapur ; Distt Sarguja (M.P.)

Criminal Appeal U/S 374 (2) Of the Code of Criminal Procedure.

(5398)

Filed on 20/4/99
by Shri K.L.S. Tirkhai Advocate

Rlw. A.R.

29

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

(DIVISION BENCH)

Criminal Appeal No.1147 of 1999

Asooram

Versus

State of Madhya Pradesh (now State of C.G.)

JUDGMENT FOR CONSIDERATION

Sd/-
L.C.BHADOO
Judge
22.12.2004

HON'BLE THE CHIEF JUSTICE

Sd/-
Chief Justice
.12.2004

POST FOR JUDGMENT ON 22ND DECEMBER, 2004

Sd/-
J U D G E
22.12.2004

(30)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Division Bench: - **Hon'ble Shri A.S.V. Moorthy, C.J.**
& Hon'ble Shri L.C. Bhadoo, J.

Criminal Appeal No.1147 of 1999

Asooram

Versus

State of Madhya Pradesh (now State of C.G.)

Present: -

Miss. Sharmila Singhahi, Advocate: For the appellant

Shri Akhil Mishra, Panel Lawyer: For the State/respondent

JUDGMENT

(Delivered on 22nd December, 2004)

The following judgment of the Court was delivered by L.C. Bhadoo J.

1. The accused/appellant Asooram has preferred this criminal appeal under Section 374(2) of Cr.P.C. being aggrieved by the judgment dated 19.2.1999 passed by learned 1st Additional Sessions Judge, Ambikapur in S.T. No.170/98 whereby learned Sessions Judge after holding the accused/appellant guilty for commission of murder of his wife Bhinsobai convicted him under Section 302 of Indian Penal Code and sentenced him to undergo imprisonment for life.

2. Brief facts necessary for disposal of this criminal appeal are that as per prosecution case accused/appellant committed the murder of his wife Bhinsobai in the night of 4.5.1998 by assaulting her with lathi. Crime was witnessed by PW-3 Udal, who came on the scene and snatched the lathi & axe from the accused/appellant and thereafter he left the house of accused/appellant. On the next day morning, accused/appellant Asooram went to Up-sarpanch of the village namely Lalluram (PW-1) and informed him that he has committed murder of his wife. In turn PW-1-Lalluram informed

(31)

Kotwar namely Sukhnath (Pw-2) and all of them reached to scene of occurrence where they saw that the wife of the accused/appellant was lying dead in his house and certain injuries were present on the body of deceased Bhinsobai. On seeing this Village Sarpanch and Upsarpanch asked the Kotwar (PW-2) to lodge the report at the police station. On this Kotwar (PW-2) gave the merg intimation (Ex.P-7), based on that F.I.R. (Ex.P-8) was registered by the Station House Officer, Police Station Sitapur, after giving notice to the Panchaas, he prepared the Panchnama (Ex.P-2) of the body of deceased Bhinsobai and thereafter, the body of deceased was sent for post mortem examination. Dr. K.K. Dutta (PW-6) conducted the post mortem and prepared post mortem report (Ex.P-12). After completion of the investigation S.H.O. filed the charge sheet before the Court of Judicial Magistrate First Class, Ambikapur, who in turn committed the case to learned Sessions Judge, Ambikapur from where learned 1st Additional Sessions Judge received the case on transfer. After framing the charge, recording the prosecution evidence & statement of the accused/appellant under Section 313 of Cr.P.C. and hearing learned counsel for the parties in the matter, learned Sessions Judge convicted and sentenced the accused/appellant in the aforesaid manner.

3. We have heard Miss. Sharmila Singhai, learned counsel for the accused/appellant and Shri Akhil Mishra, learned Panel Lawyer for the State/respondent.

4. As far as the question of death of deceased Bhinsobai is being concerned as homicidal in nature, learned counsel for the appellant has not disputed this fact. Even otherwise, as per evidence of PW-3 Udal, extra judicial confession made by accused/appellant Asooram before PW-1 Lalluram, evidence of Dr.K.K. Dutta (PW-6) and looking to the post mortem report, it is proved that the death of deceased Bhinsobai was homicidal in nature.

5. As far as the question of involvement of accused/appellant Asooram in committing the murder of deceased Bhinsobai is concerned, PW-3 Udal has categorically stated that in the night at

(32)

about 8.00p.m when he was taking dinner at his residence at that time he heard the noise of fighting between the accused/appellant and his wife, on hearing this he went to the house of the accused/appellant where he saw that the accused/appellant was assaulting his wife with a Lathi and he was holding an axe in his another hand. Therefore, he snatched the lathi & axe from his hands and left the house. Thereafter, on the next day morning accused/appellant Asooram informed him that Bhinsobai is dead. PW-1 Lalluram, who was the Village Up-Sarpanch, the accused/appellant went to him on the next day morning and made extra judicial confession before him that he has committed murder of his wife Bhinsobai. There is no reason to disbelieve the evidence of these two witnesses. The lathi and axe was also recovered from the accused/appellant. Even learned counsel for the accused/appellant has not disputed the finding of the trial court to this extent.

6. Learned counsel for the accused/appellant argued that on the facts, if the prosecution case is accepted as it is, the offence against the accused/appellant does not travel beyond Section 304 Part-II of IPC and he has been wrongly convicted and sentenced under Section 302 of IPC. She further submitted that the witnesses have stated that the accused/appellant and deceased Bhinsobai were in habit of consuming liquor, thereafter, they used to quarrel with each other. Referring the evidence of PW-3 Udal counsel argued that on the fateful night also both accused/appellant and deceased were in drunken condition, they were fighting with each other, during that period some hot words were exchanged between them and in a heat of passion the accused/appellant assaulted the deceased with lathi. Therefore, there was no intention of the accused/appellant to commit murder of his wife.

7. On the other hand learned Panel Lawyer for the State argued that looking to the nature of the injuries and the manner in which accused-Asooram assaulted deceased Bhinsobai, it is amply proved that accused/appellant assaulted Bhinsobai with an intention to commit her murder.

(33)

8. In order to appreciate the arguments of learned counsel for the parties, we have gone through the evidence of PW-3 Udal, who saw the accused/appellant assaulting Bhinsobai with lathi. In the cross-examination, PW-3 has categorically stated that the accused/appellant and his wife Bhinsobai were in drunken condition, they were abusing each other and he snatched the lathi from the hand of the accused/appellant but he had not asked reason for the quarrel either from deceased or accused/appellant, after advising them he left for his house, at that time both were satisfied and thereafter, there was no fight between them. He further stated that it is true that Bhinsobai was in the habit of consuming liquor daily. Similarly, PW-1 in his cross-examination stated that the accused/appellant is of Oraon caste and it is correct that the accused/appellant and deceased Bhinsobai used to consume liquor. Therefore, in view of the above fact it is clear that the accused/appellant and the deceased both were in drunken condition and it seems that during that drunken condition some altercation took place between the two and on this the accused/appellant assaulted his wife with lathi, as a result of which she received four contusions on her head and other parts of the body, swelling was present, there was lacerated injury on the left ear and her two incisor were also broken. There is nothing on record, which goes to show that accused/appellant assaulted his wife Bhinsobai with lathi in order to commit her murder. As mentioned above, both were in drunken condition and in that condition some hot words were exchanged between the two and in a heat of passion the accused/appellant assaulted Bhinsobai with lathi, as a result of which in the night she died on account of excessive bleeding.

9. The present case is squarely covered under the exception of Section 300 I.P.C., which says that '*culpable homicide is not murder, if it is committed without premeditation in a sudden fight, in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner*'. There is nothing on record which goes to show that accused/appellant took any undue advantage of the situation or he behaved in a cruel manner and for this view we are fortified

(34)

by the judgment of the Hon'ble Apex Court in the matter of **Manke Ram V. State of Haryana** reported in **AIR 2003 SC 4147**, facts of that case were almost similar to the present case. In that case the In-charge of Police Chowki invited the Head Constable for taking drink at his residence and during that time some altercation took place between them and in a heat of passion the A.S.I. after picking his service revolver fired two shots at the Head constable, as a result of which he died incidentally at the spot. Looking to all these facts, the Hon'ble Apex Court reached to the conclusion that *'incident took place in a sudden fight and in a heat of passion, both the accused and the deceased were inebriated and accused in using service revolver which was lying nearby cannot be said to have taken undue advantage and for that the offence against does not travel beyond Section 304 Part-II of IPC'*. In view of the above, we are of the considered opinion that the offence against the accused/appellant does not travel beyond Section 304 Part-II.

10. In the result, the appeal is partly succeed and same is allowed. The conviction and sentence of accused/appellant Asooram under Section 302 of IPC are set aside. Instead thereof accused/appellant Asooram is convicted under Section 304 Part-II of Indian Penal Code and sentenced to undergo rigorous imprisonment for 07 years. As the accused/applicant is in custody since 6.5.1998, therefore, it is directed that this period should be adjusted against the sentence awarded.

Sd/-
Chief Justice

22-12-2004

Sd/-
L.C.BHADOO
Judge

22-12-2004

Roshan/-